IN THE HIGH COURT OF JUDICATURE OF BOMBAY

ORDINARY ORIGINAL CIVIL JURISDICTION

NOTICE OF MOTION NO. 203 OF 2003

IN

SUIT NO. 3849 OF 2002

K. Arch Engineering .. Plaintiff

versus

Madhu Sarita Apts.Co-op Housing

Society Ltd. & Anr. .. Defendants

...

Mr.M.P. Jadhav for the plaintiff.

Mr.Prakash Loria i/b Y.R. Shah for the defendant.

CORAM : D.G. KARNIK,J.

DATED : 28th January 2005.

P.C.:

1. Heard the learned counsel for the plaintiff.

2. In a money suit, this motion is taken out for a direction that defendant no.1 be directed to deposit the suit amount in the Court or be directed

to furnish a security to the satisfaction of the Court. Neither of these prayers can be granted in the facts and circumstances of the case. Directing the defendant to deposit the money amounts to virtually decreeing of the suit before trial. There is no reason for directing the defendant no.1 to give security. There are no averments made in the affidavit in support that the defendant is trying to dispose of the property. The only averment is that irreparable loss would be caused to the plaintiff if the order is not passed. In a simple money suit, the defendant cannot be directed to furnish a security in unless there are proper averments made and ground is made out for order under Order 38 Rule 5 of the Code of Civil Procedure. Hence, Motion is dismissed.

D.G. KARNIK, J